HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

Description of the case

W.P. 502/2005 S/S

Khairati Ram,

Vs.

State of Uttaranchal

8 others

Approved for reporting.

Not Approved for reporting

Date of Decision: 12.2.2007

Initial of Judge:

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HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 502 (SS) OF 2005

Khairati Ram,
S/o Ram Udit,
R/o 452, Ballawala, GMS Road,
Dehradun. ..... Petitioner.

Vs.

1. State of Uttaranchal, through Secretary, Irrigation Department, Uttaranchal, Dehradun.
2. Chief Engineer & Head of Department, Irrigation Department, Uttaranchal Dehradun.
3. Superintending Engineer, Irrigation Works Circle, Dehradun.
4. Executive Engineer, Irrigation Division, Subhash Road, Dehradun. .....Respondents.

Dated: 12. 02.2007

Hon'ble Rajesh Tandon, J.

Heard Sri M.C. Pant, counsel for the petitioner and Standing Counsel for the respondents.

2. By the present writ petition, the petitioner has prayed for a writ of mandamus directing the respondents to pay arrear of pension and post-retrial benefits to the petitioner taking into consideration the date of retirement i.e. 31st March, 2003. Further mandamus has been prayed directing the respondents to pay 18% on the amount after 31st March, 2003.

3. Briefly stated, according to the case of the petitioner, he was initially appointed in the Work Charge Establishment as Chaukidar on 10th June, 1978 in the pay-scale of Rs. 275/- per month. Thereafter, he was given designation of **Varg Andaj** in the department, which is also a Class-IV post. Thereafter, he continued to work as **Varg Andaj** and after the recommendation of the 4th Pay Commission w.e.f. 1st January, 1986, the pay-scale of Rs. 75-1025 was made admissible to the petitioner.

4. However, the petitioner was regularized in Class-IV post w.e.f. 1st September, 1993 and subsequently he was confirmed on 1st September, 1999.

5. The petitioner was proposed to be retired on attaining the age of 58 years i.e. on 31st March, 2001. However, he preferred a Writ Petition being Writ Petition No. 31 of 2001, which was allowed with the following observation:

> "10. I am in full agreement with the contention of the learned counsel for the petitioner as the word "recruitment" does not mean "regularization" particularly for the purpose of workmen, who had their own pay scale and the retirement age. They shall be treated to be appointed prior to 5.11.1985 for the purposes of Fundamental Rule 56 as amended vide U.P. Fundamental (First Amendment) Rule, 1987.
>
> 11. Therefore, for the reasons as discussed above, the notice of retirement issued against the petitioner fro retiring him at the age of 58 years is liable to be quashed.

> 12. Accordingly, the writ petition is allowed. The notce dated 14.08.2000 issued to the petitioner, for retiring him at the age of 58 years is, hereby, quashed. The petitioner shall be treated to have retired at the age of 60 years. Respondents shall pay the entire arrears of salary and post-retrial benefits treating him to be in service between the age of 58 years to 60 years. “

6. However, the petitioner retired on attaining the age of superannuation i.e. 60 years on 31st March, 2003.

7. The grievance of the petitioner is that he has completed 25 years of continuous service as work charge and thereafter, he was regularized in Class-IV w.e.f. 1st September, 1993, but in spite of the representation, he is not being paid pension and post-retiral dues.

8. A counter affidavit has been filed and in paragraph 10, it has been stated that he is regular employee, who has worked from 1st September, 1993 upto 31st January, 2003 i.e. 9 years and three months, which is less than ten years and therefore, the service is not pensionable. However, it has been stated by the State that the salary and gratuity has already been paid up to the age of 60 years. Relevant paragraph 10 of the counter affidavit is quoted below:-

> “10. That the contents of para 13 of the writ petition are not admitted, hence denied. It is, wrong to state that the petitioner had served the department continuously for the 25 years. The petitioner had worked in work charged establishment from dated 10-6-1978 to 1-9-

1993, which is not counted for the pension and from dated 1-9-1993 to 31-1-1003, i.e. 9 years 3 months, he had worked in the regular establishment, which is less then 10 years, which is not pensionable. The payment of salary and gratuity has already been paid upto the age of 60 years."

9. The grievance of the petitioner is that in spite of his representation dated 4th October, 2004, the same remained undisposed of. He is claiming the pension from the date of his initial appointment, whereas according to the State the same is not available to the work charged employees in view of the conditions of qualifying service as constituted under Regulation 370 of the Civil Service Regulation. It reads as under:

"[370. Continuous temporary or officiating service under the Government of Uttar Pradesh followed without interruption by confirmation in the same or any other post shall qualify except-

(i) period of temporary or officiating service in non-pensionable establishment:

(ii) Period of service in work-charged establishment; and

(iii) Periods of service in a post paid from contingencies."

10. However, since the representation of the petitioner has not yet been disposed of, therefore, without entering into the merit of the controversy, the respondent no. 4 is directed to dispose of the representation of the petitioner dated 4th October, 2004 in accordance with Regulation 370 of Civil Services Regulation regarding pensionery benefits available to the petitioner within a

period of six weeks from the date of presentation of the certified copy of the order.

11. Writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

12.02.2007
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